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Bottorff

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re TruckCraft Corporation

Serial No. 75731589

John P. Halvonik for TruckCraft Corporation.

John S. Yard, Trademark Examining Attorney, Law Office 115
(Tomas Vlcek, Managing Attorney).

Before Seeherman, Bucher and Bottorff, Administrative
Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

In the above-referenced application, applicant seeks registration on the Principal Register of the mark TRUCKCRAFT (in typed form) for goods identified in the application, as amended, as "structural parts for trucks, namely, dump truck bodies, truck bed flats, dumper beds, dump truck bed and body inserts for pickup trucks," in

Class 12.¹ The application is based on use in commerce under Trademark Act Section 1(a), 15 U.S.C. §1051(a), and

¹ We have corrected the identification of goods to reinsert the inadvertently omitted word "namely." The identification of goods in the application as originally filed read "truck equipment and accessories namely: dump bodies, truck flats, pickup dump inserts, dumper beds, and de-icer systems." In the first Office action, the Trademark Examining Attorney found that this identification of goods was unacceptable as indefinite and because it included goods that were classified in more than one international class. He suggested as follows:

[A]pplicant may amend the identification to substitute any or all of the following if accurate:

International Class 7: Power operated, vehicle mounted, salt and sand spreaders for winter road maintenance; Power operated salt and sand spreaders for winter road maintenance;

International Class 12: Structural parts for trucks, namely, dump truck bodies, truck bed flats, dumper beds, dump truck bed and body inserts for pickup trucks.

In its response to this first Office action, applicant requested that the identification of goods be amended to "structural parts for trucks, dump truck bdoies [sic], truck bed flats, dumper beds, dump truck bed and body inserts for pickup trucks" in Class 12. In other words, applicant adopted the Trademark Examining Attorney's suggested Class 12 identification of goods exactly, except that applicant omitted the word "namely" after the opening phrase "structural parts for trucks." The Trademark Examining Attorney accepted and entered this amended identification of goods, including its omission of the word "namely."

It is apparent that this omission of the word "namely" was inadvertent on applicant's part. Moreover, absent the word "namely," the amended identification of goods would be an impermissible expansion of the scope of the identification of goods as set forth in the original application, inasmuch as the original identification of goods set forth specifically enumerated "structural parts for trucks," while the amended identification of goods (which omits "namely") would include no such limitations but rather would cover any and all "structural parts for trucks." See Trademark Rule 2.71(a).

In view thereof, and to correct what obviously is an error in applicant's recitation of the requested amended identification

January 15, 1992 is alleged in the application as the date of first use of the mark anywhere and the date of first use of the mark in commerce.

The Trademark Examining Attorney has issued a final refusal to register applicant's mark, on the ground that the mark, as applied to the identified goods, so resembles the mark depicted below



which is registered for "generators and alternators for trucks" in Class 7, and "truck parts, namely, brake blocks, oil seals, gearing, rebuilt clutches, water pumps, starters and moisture ejectors" in Class 12,² as to be likely to cause confusion, to cause mistake, or to deceive.

Trademark Act Section 2(d), 15 U.S.C. §1052(d).

of services (an error which should have been but was not corrected by the Trademark Examining Attorney), we have amended the identification of goods by reinserting the inadvertently omitted word "namely."

² Registration No. 1,177,827, issued November 17, 1981 and subsequently renewed. Section 8 and 15 affidavits accepted and acknowledged. The identification of goods in the registration as originally issued included "batteries and instruments, namely, tachometers and speedometers for trucks" in Class 9, but that class was subsequently deleted from the registration.

Applicant has appealed the final refusal. Neither applicant nor the Trademark Examining Attorney made any evidence of record.³ Applicant and the Trademark Examining Attorney filed opening briefs, but applicant did not file a reply brief and did not request an oral hearing. We reverse the refusal to register.

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We turn first to the issues of the similarity or dissimilarity of the goods identified in applicant's application and the goods identified in the cited

³ Applicant attached evidentiary materials to its appeal brief, and the Trademark Examining Attorney objected thereto in his brief on the ground of untimeliness. The objection is well-taken, and we have given applicant's evidentiary materials no consideration. See Trademark Rule 2.142(d), 37 C.F.R. §2.142(d).

registration, the trade channels for such goods, and the classes of purchasers for such goods. It is not necessary that the respective goods or services be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods or services are related in some manner, or that the circumstances surrounding their marketing are such, that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same source or that there is an association or connection between the sources of the respective goods or services. *See In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); *In re International Telephone & Telegraph Corp.*, 197 USPQ2d 910 (TTAB 1978).

We find that the Trademark Examining Attorney has failed to establish that applicant's goods and registrant's goods are sufficiently similar or related that confusion is likely to result if the respective goods are marketed under confusingly similar marks. The Trademark Examining argues, first, that applicant's identification of goods includes "structural parts for trucks" and that the Class 12 goods

identified in the cited registration are themselves "structural parts for trucks," and thus within the scope of the goods identified in the application. As noted above at footnote 1, however, we have corrected applicant's identification of goods to reinsert the word "namely" after "structural parts for trucks," such that applicant's identification of goods does not cover any and all types of "structural parts for trucks," but only those structural parts specifically enumerated in the remainder of the identification of goods, i.e., "dump truck bodies, truck bed flats, dumper beds, dump truck bed and body inserts for pickup trucks." In view thereof, we are not persuaded by the Trademark Examining Attorney's argument that the Class 12 goods identified in the registration are encompassed within or legally identical to the "structural parts for trucks" identified in applicant's application.⁴

⁴ Moreover, even if applicant's identification of goods were deemed to cover all "structural parts for trucks" rather than just those specifically enumerated in the identification, we cannot find on this record that registrant's Class 12 goods, i.e., "truck parts, namely, brake blocks, oil seals, gearing, rebuilt clutches, water pumps, starters and moisture ejectors," are in fact "structural parts for trucks." The Trademark Examining Attorney has not submitted any evidence that "structural parts for trucks" has a particular or specialized meaning in the industry. Accordingly, we shall construe those words in their normal sense, i.e., as referring to the parts of a truck which pertain to or involve the basic structure of the truck, such as the truck's chassis and body. In this regard, we note that the Trademark Acceptable Identification of Goods and Services Manual, when it lists specific "structural parts" of

The Trademark Examining Attorney argues, alternatively, that even if the respective goods are not legally identical, they nonetheless are similar and related because they are all truck parts. He cites numerous reported cases in which the Board has found that various vehicles, vehicle parts and accessories are similar and related for purposes of determining likelihood of confusion. See, e.g., *In re Jeep Corporation*, 222 USPQ 333 (TTAB 1984), and cases cited therein. However, we do not read these cases as establishing a per se rule that vehicles, vehicle parts and accessories always must be deemed to be related and similar. As the Board noted in *In re Jeep Corporation, supra*, the decisions in which such goods were found to be related

were based upon the facts that the goods in question all comprised automotive parts, accessories, and equipment which could be purchased through the same channels of trade, including dealers, service stations, automotive accessory and supply stores, or the automotive departments of general merchandisers, by the

vehicles, lists items which are or would be part of or attached to the chassis or body of the vehicle, i.e., "bug shields as structural parts of vehicles," "hood shields as structural parts of vehicles," "mud flap brackets as structural parts of vehicles," and "side shields as structural parts of vehicles." The Class 12 goods identified in the cited registration, by contrast, do not appear to be "structural parts" of this type, but rather are parts pertaining to the engine, the transmission, or other aspects of the mechanical operation of the truck.

same classes of purchasers, such as mechanics, dealers, and motorists.

222 USPQ at 334.

In the present case, however, there is no evidence that registrant's and applicant's respective goods are the types of parts, accessories and equipment which normally would be purchased through the same channels of trade and by the same classes of purchasers. Applicant has asserted, credibly, that its "dump truck bodies, truck bed flats, dumper beds, dump truck bed and body inserts for pickup trucks" are, by their nature, highly specialized products which are not sold through the same trade channels and to the same classes of purchasers as are registrant's more basic replacement parts. Applicant's goods are purchased and used to change the basic function of a truck (as in converting a pickup truck into a dump truck), or else are used to finish the manufacture of larger trucks such as commercial dump trucks, which come off the assembly line in an unfinished state. These highly specialized goods, on their face, do not appear to be the types of goods, like registrant's goods, that would be purchased or used by truckers or truck repair shops in connection with basic truck repairs, and there is no evidence in the record which establishes such a relationship between the respective

goods. This case therefore is distinguishable from *In re Jeep Corporation* and the other cases cited by the Trademark Examining Attorney.

In short, The Trademark Examining Attorney has presented no specific argument or evidence as to why or how the particular goods involved in this case are related or similar, apparently relying instead on the existence of a per se rule regarding the relationship between vehicle parts and accessories. Because no such rule exists, and because there is no basis in the record for concluding that applicant's and registrant's respective goods are the types of goods that normally are marketed in the same trade channels and to the same classes of purchasers, we find that the respective goods, their trade channels, and their classes of purchasers are dissimilar rather than similar for purposes of our likelihood of confusion analysis.⁵

Turning now to a comparison of the marks, we find that they are more similar than dissimilar due to the fact that they both prominently feature slight variations on the term TRUCK CRAFT, i.e., TRUCKCRAFT and TRUCKRAFT. However, we also find that this term is fairly suggestive as applied to

⁵ Our finding that the goods are dissimilar and unrelated is based on the absence of evidence which would support a contrary finding of similarity. That is not to say that, on a different evidentiary record (for example in an inter partes proceeding), we would not reach a different result.

the truck parts identified in the application and registration, respectively. In view thereof, we find that the scope of protection to be afforded the registered mark is narrower than it would have been if the mark were stronger. Specifically, we find that the marks, although similar, are not so similar that confusion is likely to result from their contemporaneous use on the dissimilar and unrelated goods identified in the application and registration, respectively.

We also are persuaded by applicant's contention that its goods, by their nature, are of a type which are not likely to be purchased on impulse, but rather with some degree of care, a fact which further militates against a finding of likelihood of confusion.

On balance, we find that the evidence of record on the *du Pont* likelihood of confusion factors, including the absence of evidence establishing that the respective goods are similar or related, leads us to conclude that there is no likelihood of confusion.

Decision: The refusal to register is reversed.